

[Senate Bill 747](#) (McGuire)

Date: 05/06/15

Program: Sales and Use Tax

Sponsor: Author

Revenue and Taxation Code Section 7102.1

Effective: January 1, 2016, but operative December 8, 2017

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Summary: Requires the sales and use taxes revenues derived from aviation fuel sales to be transferred to the Aeronautics Account, as specified.

Purpose: To guarantee that tax collected on aviation fuel sales is used for aeronautical purposes as directed by the Federal Aviation Administration (FAA) to provide financial assistance to state airports and aviation programs.

Fiscal Impact Summary: Transfer of \$140 million in sales and use tax revenues derived from jet fuel sales from the General Fund to the Aeronautics Account.

Existing Law: *Sales and Use Taxes:* Current law imposes a state, local, and district sales tax on the gross receipts derived from tangible personal property sold at retail in this state, unless the sale is specifically exempted from the tax.¹

Sales tax generally applies to sales of jet fuel to air common carriers. However, existing law provides an exemption for the sale of fuel and petroleum products to air common carriers for immediate consumption or shipment in the conduct of its business as an air common carrier on an international flight. For domestic flights, state, local and district taxes generally apply to jet fuel sales to air common carriers.²

The BOE collects the one percent Bradley-Burns Uniform Local Sales and Use Tax³ on retail jet fuel sales and transmits the tax to the city or county in which the fuel is delivered into the aircraft.⁴ Specified exceptions exist, however, for “multijurisdictional” airports – those owned or operated by a different city or county than the one in which the airport is located.⁵ The remaining portion of the applicable sales tax imposed on jet fuel sales to air common carriers or others is allocated in the same manner as the general allocation of sales tax.

Sales and purchases of aviation gasoline, defined in law as motor vehicle fuel used to propel aircraft, are exempt from state, local, and district sales and use tax.⁶

Since January 1, 2013, a statewide 7.5% sales and use tax rate applies to tangible personal property sales and purchases. The table shows California’s various sales and use tax rate components, including the 1% Bradley-Burns Local Sales and Use Tax (the table excludes voter-approved city and county district taxes, which range from 0.1% to 2.5%):

Rate	Jurisdiction	Purpose/Authority
3.9375%	State (General Fund)	State general purposes (RTC Sections 6051, 6051.3, 6201, 6201.3)

¹ Sales and Use Tax Law, Part 1 (commencing with Section 6001), of Division 2 of the Revenue and Taxation Code (RTC).

² RTC Section 6357.5.

³ Bradley-Burns Uniform Local Sales and Use Tax, Part 1.5 (commencing with Section 7200), of Division 2 of the RTC.

⁴ RTC Section 7205.

⁵ RTC Section 7204.03.

⁶ RTC Section 6357.

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Rate	Jurisdiction	Purpose/Authority
0.25%	State (Fiscal Recovery Fund)	Repayment of the Economic Recovery Bonds (RTC Sections 6051.5 and 6201.5, operative 7/1/04)
0.50%	State (Local Public Safety Fund)	Local governments to fund public safety services (Section 35, Article XIII, State Constitution)
0.25%	State (Education Protection Account)	Until 01/01/17, schools and community college funding (Section 36, Article XIII, State Constitution)
0.50%	State (Local Revenue Fund)	Local governments to fund health and welfare programs (RTC Sections 6051.2 and 6201.2)
1.0625%	Local Revenue Fund 2011	Realignment of local public safety services (RTC Sections 6051.15 and 6201.15)
1.00%	Local (City/County) 0.75% City and County 0.25% County	(RTC Section 7203.1, operative 7/1/04) General city and county operations County transportation purposes
7.50%	Total Statewide Rate	

Excise Taxes: Current law imposes a jet fuel tax on a jet fuel dealer at the rate of \$0.02 per gallon sold to an aircraft jet fuel user.⁷ A jet fuel user *does not* include an air common carrier, the United States (U.S.) armed forces, and manufacturers and servicers of aircraft.⁸

Revenue derived from the jet fuel excise tax is allocated to the state's aeronautics account.⁹

Aviation gasoline, which is subject to the Motor Vehicle Fuel Tax Law¹⁰ and exempt from sales and use tax, is taxed at \$0.18 per gallon.¹¹ California imposes this excise tax when the aviation gasoline suppliers remove the gasoline from the refinery or terminal rack, upon entry into the state, or upon a sale to an unlicensed person.¹²

Revenue derived from the aviation gasoline excise tax is allocated to the state's aeronautics account.¹³

Proposed Law: Beginning December 8, 2017, the bill requires General Fund revenues, less refunds, derived from sales and use taxes on aviation fuel, pursuant to Sections 6051, 6051.3, 6201, and 6201.3, at the rate of 3.9375%, be transferred to the Aeronautics Account.¹⁴

"Aviation fuel" is defined as jet fuel and aviation gasoline.

This bill also adds Section 21689 to the Public Utilities Code to allocate funds from the Aeronautics Account to eligible recipients at specified percentages and purposes.

This bill becomes effective January 1, 2016, but is operative December 8, 2017.

⁷ RTC Section 7392.

⁸ RTC Section 7389.

⁹ RTC Sections 7398 and 8352.3.

¹⁰ Motor Vehicle Fuel Tax Law (MVFTL), Part 2 (commencing with Section 7301), of Division 2 of the RTC.

¹¹ RTC Section 7360.

¹² RTC Sections 7362, 7363, and 7364.

¹³ RTC Section 8352.3.

¹⁴ The 2011 Realignment (AB 118, Ch. 40, Stats. 2011) requires 1.0625% of sales tax (RTC Section 6051) and 1.0625% of use tax (RTC Section 6201) be deposited in the Local Revenue Fund 2011. Therefore, we assume the sales and use tax rate for this bill is 3.9375%. Both the 0.25% "triple-flip" and 0.25% Prop. 30 sales and use tax rates will expire before this bill's operative date of December 8, 2017.

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Background: In four separate acts, Congress restricted the use of airport revenue by airport operators that have accepted Federal assistance:

- The Airport and Airway Improvement Act of 1982 established the basic rules for the use of airport revenue.
- The Airport and Airway Safety and Capacity Expansion Act of 1987 extended the restriction on the use of airport revenue to include any local taxes on aviation fuel. This act requires the taxing authorities to use local aviation fuel taxes (except taxes in effect on December 30, 1987) for specified aviation-related purposes.
- The FAA Authorization Act of 1994 required the FAA to publish a [Revenue Use Policy](#) on the use of airport revenue.
- The FAA Reauthorization Act of 1996 extended the restrictions on the uses of airport revenue to private airports that have received federal assistance.

In 1999, the FAA's [Revenue Use Policy](#) implemented the above requirements. On December 8, 2014, the FAA adopted an [amendment to its Revenue Use Policy](#) and clarified requirements for the use of tax proceeds from aviation fuel by airport operators that have accepted federal assistance. Under this recent clarification, the FAA policy requires that state and local tax revenues from aviation fuel be used for certain aviation-related purposes, including airport capital and operating costs and state aviation programs.

The FAA policy amendments also require the states to submit an action plan within a year from the amended policy date (by December 8, 2015) that details the process necessary to develop reporting requirements and tracking systems to obtain discrete information on aviation fuel tax revenues. They also require states to initiate the process to amend any non-compliant state laws and local ordinances as necessary to conform.

FAA policy generally requires that proceeds from taxes on aviation fuel, except those taxes in effect on December 30, 1987, be used for specified aviation-related purposes. Although California's sales and use tax historically has applied to jet fuel sales before December 30, 1987, California has enacted general sales and use tax rate increases subsequent to that date, and voters have approved all but six transactions and use district taxes since December 30, 1987.

The FAA amendments also allow the states' action plans to include a reasonable transition period, not to exceed three years (from December 8, 2014). The failure to comply with these requirements can result in civil penalties of up to three times the amount of airport revenues that are used in violation of these provisions.

In General: The BOE currently administers the jet fuel tax; imposed on jet fuel dealers at \$0.02 *per gallon sold* to jet fuel users. The definition of a jet fuel user specifically excludes an air common carrier, the U.S. armed forces, and manufacturers and servicers of aircraft. The jet fuel dealer excise tax return requires taxable gallons sold to be reported; the jet fuel dealer also voluntarily reports "exempt"¹⁵ gallons sold to the common carriers, U.S. armed forces, and the manufacturers and servicers of aircraft. The law does not require the reporting of the "exempt" gallons sold, and the return does not require or capture the aircraft jet fuel dealer's sales to common carriers attributable to domestic flights or international flights.

Alternatively, the sales and use tax is generally imposed on the jet fuel dealer's taxable *gross receipts*. The taxable gross receipts includes the sale, storage, use, or other consumption of jet fuel, as well as any other sales of tangible personal property sold at retail in this state, unless the sale is specifically exempted or excluded from the tax. As explained previously, both aviation gasoline and jet fuel sales for international flights are exempt from the sales and use tax. The jet fuel dealers generally report their total gross receipts from all their sales and deduct exempt sales to arrive at the net taxable sales. Jet

¹⁵ Total nontaxable transactions reported.

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fuel dealers' sales may consist solely of aircraft fuel, but may also include other items. Rather than reporting their total gross receipts, some jet fuel dealers report just the net taxable sales amount. Either way, the sales tax return does not require the separate reporting of fuel sales from other sales, or taxable or exempt gallons sold.

Commentary:

1. **Effect of the bill.** This bill seeks to bring the state into compliance with FAA directives by allocating sales and use tax revenues derived from aviation fuel sales to the Aeronautics Account to provide financial assistance to state airports and aviation programs.
2. **Jet fuel dealers would need to segregate and report their jet fuel sales.** To track sales tax revenues associated with jet fuel sales, the BOE would be required to rely on approximately 225 jet fuel dealers to segregate sales of jet fuel from any other sales when filing their sales and use tax returns. The BOE obtains necessary information on jet fuel excise tax and aviation gas from the 225 jet fuel dealers and six aviation gasoline suppliers to allocate excise tax. As explained previously, the jet fuel dealer's sales and use tax return captures taxable gross receipts for all products sold by the jet fuel dealer. BOE staff suggests that the bill require the jet fuel dealers to report and segregate their taxable and exempt jet fuel sales on their sales and use tax returns.

The bill should also specify when the transfers to the Aeronautics Account are to be made, such as quarterly or annually. Transfer periods should align with fiscal year or quarterly periods for consistency with current jet fuel dealers' tax reporting periods.

3. **Is the bill in compliance with FAA's policy?** This bill only requires sales and use tax revenues at the 3.9375% rate be transferred to the Aeronautics Account. However, the FAA policy generally requires that *all* taxes on aviation fuel, except those taxes in effect on December 30, 1987, be used for specified aviation-related purposes. California has enacted general sales and use tax rate increases subsequent to December 30, 1987, and voters have approved all but six transactions and use district taxes since that date.¹⁶ For example, in 1991, legislation was enacted to impose a half percent sales and use tax rate increase for local public safety services; a half percent rate increase for mental health realignment purposes, and a quarter percent state General Fund increase. These rates continue to apply today.¹⁷ The FAA's policy is unclear regarding whether these additional components, along with the district taxes collected on aviation fuels enacted after December 30, 1987, would be affected. Depending on FAA's intended policy, this bill may be inconsistent with the FAA requirements.

Administrative Costs: This bill could result additional costs to the BOE, which may include notifying affected retailers, revising jet fuel retailers' returns and associated programming, and identifying and tracking revenues. The original 1999 FAA policy discusses permitted use of airport revenue, and allows certain government costs to be deducted from those revenues. The policy includes a statement indicating any deducted costs would be scrutinized. It is unclear whether the BOE's administrative costs, including educating taxpayers, programming, and tracking and allocating the revenue, would be included within the allowable deductions.

¹⁶ BOE Publication (BOE-105), [District Sales and Use Tax Rates](#).

¹⁷ See "Existing Law" section of this analysis.

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Revenue Impact:

Background, Methodology, and Assumptions. According to the U.S. Energy Information Administration, annual sales of jet fuel to end users amounted to 2.420 billion gallons in 2014.¹⁸ The first fiscal year SB 747 would be in effect is 2018-19. Since 1984 (the first year data are available), California jet fuel gallons increased about 1.5 percent per year. We will assume this growth from 2015 through fiscal year (FY) 2018-19, to 2.6 billion gallons.

Based on Congressional testimony and assuming national percentages apply to California, we estimate that 10 percent of jet fuel sold in this state is for military use.¹⁹ According to the Bureau of Transportation Statistics, carrier fuel consumption on international flights averages about 36 percent of the total U.S. end user jet fuel sales. Staff will assume this national percentage accurately represents California.²⁰ Military and international purchases are exempt from sales and use tax. Therefore, a total of 46 percent of jet fuel gallons sold are exempt, and 54 percent are taxable.

Prices of jet fuel sales are volatile, as they are closely related to world crude oil prices. U.S. jet fuel prices averaged \$2.77 per gallon in 2014. We estimate jet fuel prices to be \$2.54 per gallon in FY 2018-19 based analyses of the relationship of jet fuel prices to crude oil prices as forecast by IHS Global Insight, a well-known economic forecasting firm.

Combining all these data, we estimate general fund revenues associated with jet fuel to be about \$140 million in FY 2018-19 (2.6 billion x 0.54 x 2.54 x 0.039375 = \$140.4).

Revenue Summary. This bill will result in the annual transfer of \$140 million of sales and use tax revenues derived from jet fuel sales from the General Fund to the Aeronautics Account.

Qualifying Remarks. Jet fuel prices are highly variable, and there is much uncertainty in forecasting them to FY 2018-19. This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.

¹⁸ U.S. Energy Information Administration:

<http://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=A503650061&f=A>

¹⁹ Congressional testimony:

https://palazzo.house.gov/uploadedfiles/palazzo_testimony_to_the_national_commission_on_the_structure_of_the_a_ir_force.pdf

²⁰ Bureau of Transportation Statistics: <http://www.transtats.bts.gov/fuel.asp>

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